

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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**FISCAL IMPACT STATEMENT**

**LS 7182**

**BILL NUMBER:** SB 537

**NOTE PREPARED:** Apr 4, 2013

**BILL AMENDED:** Mar 28, 2013

**SUBJECT:** Secretary of State, Dealer Services, and Vehicles.

**FIRST AUTHOR:** Sen. Wyss

**FIRST SPONSOR:** Rep. Soliday

**BILL STATUS:** As Passed House

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** The bill establishes a Dealer Services Division (Division) within the Office of the Secretary of State (Secretary), and provides that the Division administers and has jurisdiction over vehicle dealer services.

The bill establishes procedures: (1) for administration of the Division; and (2) for judicial action concerning the Division. It requires the Secretary of State to adopt emergency rules before January 1, 2014, to carry out the Secretary of State's duties. It requires the Secretary of State to adopt rules before July 1, 2014, to replace the emergency rules. It provides that a person who violates statutes or rules pertaining to services or an order issued by the Secretary pertaining to services is subject to a civil penalty of up to \$10,000 for each violation.

The bill establishes the Dealer Enforcement Account to be used to support the Division. It provides for criminal penalties for certain violations pertaining to services. It provides for criminal penalties for certain actions relating to unfair practices committed by persons subject to licensing by the Division. It establishes the Motor Vehicle Sales Advisory Board. It includes a transfer dealer as a dealer. It repeals and relocates language concerning dealer services and adds language concerning the requirements for a license for a wholesale dealer. It adds a dealer-wholesale license plate and a fee for the license plate.

The bill provides that an auto auctioneer is a person providing a place of business or facilities for the purchase and sale of more than three motor vehicles a year. (Under current law the threshold is one motor vehicle a year.) It provides that the 30 business day period for purposes of determining whether a reasonable number of attempts have been made to correct a nonconformity in the sale of certain motor vehicles is extended by any period during which repair services are unavailable due to civil unrest, fire, a natural disaster, a terrorist attack,

an act of God, or war. (Current law extends the period only when repair services are unavailable due to a strike.)

The bill provides that a dealer who fails to deliver a certificate of title within a certain time frame is subject to certain civil penalties for violations that occur within a calendar year. It requires a dealer to make payment to a third party to satisfy any obligation secured by the vehicle within ten days after the date of sale. (Current law requires that the payment be made within five days of sale.) It makes it a Class D felony for a disposal facility, a scrap metal processor, or an agent of a disposal facility or scrap metal processor to knowingly, intentionally, or recklessly buy a motor vehicle that is less than 15 model years old without a certificate of title for the motor vehicle. It makes it a Class A misdemeanor for a dealer who sells, exchanges, or transfers a rebuilt vehicle without disclosing in writing to the purchaser, customer, or transferee, before consummating the sale, exchange, or transfer, the fact that the vehicle is a rebuilt vehicle, if the dealer knows or should reasonably know the vehicle is a rebuilt vehicle.

The bill permits the Secretary to commence a proceeding to administratively dissolve a corporation if the Secretary receives credible evidence that the corporation is engaged in illegal activity or activity not authorized by the corporation's articles of incorporation.

The bill repeals provisions superseded by this bill, makes conforming amendments and technical corrections, and makes an appropriation.

**Effective Date:** Upon passage; July 1, 2013.

**Explanation of State Expenditures:** *Secretary of State (SOS):* The bill will increase the workload of the Dealer Services Division (DSD) by allowing them to enforce, through police powers, regulations governing licensed dealers in the state. The expenses of administering and enforcing these provisions are expected to be provided from fee and penalty revenue generated and distributed to the Dealer Enforcement Account (also created by the bill).

The bill may also decrease the workload of the SOS to the extent new regulations for wholesale dealers decreases the number of dealer licenses issued in the state. Actual decreases are unknown.

*Attorney General (AG):* The bill requires the AG's office to assist in the prosecution of the cases brought by the DSD. The bill's requirements are within the agency's routine administrative functions and should be able to be implemented with no additional appropriations, assuming near customary agency staffing and resource levels.

*Legislative Service Agency (LSA):* This bill requires the LSA to prepare legislation for introduction in the 2014 regular session of the General Assembly to organize and correct affected statutes if necessary. LSA's current level of staff and resources should be sufficient to implement the relevant provisions within the bill.

*Penalty Provisions:* This bill will change state expenditures for the enforcement of new, enhanced, reduced, and deleted penalty provisions governing licensed dealers in the state. The actual change in state expenditures is unknown.

**Additional Information:**

*Motor Vehicle Sales Advisory Board:* The bill reestablishes the Motor Vehicle Sales Advisory Board that was previously repealed under P.L. 197-2011. The Board consists of the Secretary of State and 11 other members appointed by the Governor. Members of the Board are entitled to per diem and reimbursement for expenses. This bill will result in new state expenditures for member per diem and expense reimbursements for the Board beginning in FY 2014. The actual state expenditures will depend on the frequency of meetings, how many members attend the meetings, and how many members request reimbursements.

*Regulation of Wholesale Dealers:* The SOS also reports the bill may decrease the number of out-of-state wholesale dealers who establish temporary wholesaler dealer businesses in the state by requiring dealers to maintain physical offices in the state. The actual decrease in workload is unknown but expected to be small.

*(Revised) Dealer Enforcement Provisions:* This bill transfers provisions of currently existing statute pertaining to the DSD to a new chapter of the Indiana Code. The former provisions that pertained to the DSD are also repealed by the bill.

The implementation of these provisions are expected to increase the workload of the SOS to provide enforcement, but would have no additional fiscal impact on the DSD. Currently, the DSD operates on an annual budget of approximately \$900,000. The DSD operations are self-sustaining from the collection of civil penalties, user fees, and daily transactions.

However, the bill makes changes to penalty provisions in current statute and also creates new penalty provisions where, under current statute, violations did not carry a penalty. The penalty provision changes in this bill are included in the table below.

<b>Subject Matter</b>	<b>Language in Current Law and Current Penalty</b>	<b>Similar Language in Bill and Penalty As Proposed</b>	<b>Analysis</b>
<b>Disclosure of Rebuilt Motor Vehicle (IC 9-22-3-18.5:30)</b>	IC 9-22-3-33: Current violations result in a Class B Misdemeanor.	IC 9-22-3-33: Class A misdemeanor.	The bill enhances these crimes from Class B misdemeanors to Class A misdemeanors.
<b>Regulation of Disposal Facilities and Scrap Metal Processors (IC 9-22-5-18)</b>	No current language in Indiana Code.	Violation of IC 9-22-5-18 is considered a Class D felony.	The bill adds new criminal penalties for regulation of disposal facilities and scarp metal processors. As a result, the number of Class D felony convictions in the state may increase.

Subject Matter	Language in Current Law and Current Penalty	Similar Language in Bill and Penalty As Proposed	Analysis
<b>Obtaining, Expiration, Replacement, and Transfer of Certificate of Title (IC 9-32-4)</b>	<p>IC 9-17-3-7: Violation of IC 9-17-3 is punishable as a Class C infraction.</p> <p>Violation of IC 9-17-3-3 subsections (a)(1), (a)(2), (a)(4), and (a)(5) is a Class B misdemeanor.</p> <p>Violating IC 9-17-3-3(a)(3) is considered a Class A misdemeanor for a first offense and a Class D felony for a subsequent offense.</p>	<p>IC 9-32-17-2: Violation of IC 9-32-4 is punishable as a Class C infraction.</p> <p>Violation of IC 9-32-4-1 subsections (a)(1), (a)(2), (a)(4), (a)(5), and (d) is a Class B misdemeanor.</p> <p>Violating IC 9-32-4-1(a)(3) is considered a Class A misdemeanor for a first offense and a Class D felony for a subsequent offense.</p> <p>IC 9-32-17-9: Violation of IC 9-32-4-1(c) is punishable with a civil penalty of \$100 (first offense), \$250 (second offense), or \$500 (subsequent offense). Revenue deposited in Dealer Enforcement Account.</p>	<p><u>Summary:</u> Adds a Class B misdemeanor for violating IC 9-32-4-1(d). This may increase civil penalty revenue and Class B misdemeanor convictions.</p> <p>Adds civil penalty provisions to IC 9-32-4-1(c) that will increase revenue to the Dealer Enforcement Account.</p> <p>All other violations [excluding IC 9-32-4-1(c)] are also subject to a maximum civil penalty of up to \$10,000 (IC 9-32-17-1). This revenue is deposited in the Dealer Enforcement Account.</p>
<b>Manufacturers, Converter Manufacturers, and Dealers; Manufacturers' Certificate of Origin (IC 9-32-5)</b>	<p>IC 9-17-8-9: Violation of IC 9-17-8 is a Class C infraction.</p> <p>Maximum judgement for a Class C infraction is \$500, which is deposited in the General Fund.</p>	<p>IC 9-32-17-8: Violation of IC 9-32-5-2 and IC 9-32-5-8 is punishable with a civil penalty of \$100 (first offense), \$250 (second offense), or \$500 (subsequent offense). Revenue deposited in Dealer Enforcement Account.</p>	<p><u>Summary:</u> Expected to decrease revenue to the General Fund by designating fines for the Dealer Enforcement Account.</p> <p>All other violations (excluding IC 9-32-5 sections 2 and 8) are also subject to a maximum civil penalty of up to \$10,000 (IC 9-32-17-1). This revenue is deposited in the Dealer Enforcement Account.</p>

Subject Matter	Language in Current Law and Current Penalty	Similar Language in Bill and Penalty As Proposed	Analysis
<b>Dealer License Plates (IC 9-32-6)</b>	<p>IC 9-18-26-11: Violation of IC 9-18-11 is considered Class B misdemeanor.</p> <p>IC 9-18-26-12: Violation is considered a Class A infraction.</p> <p>IC 9-18-26-13: Violation is considered a Class C misdemeanor.</p> <p>IC 9-18-26-14: Violation subject to civil penalty between \$50 and \$1,000 per day in violation (paid to the General Fund).</p>	<p>IC 9-32-17-3: A violation of IC 9-32-6-7, IC 9-32-6-10, IC 9-32-6-11(d), IC 9-32-6-12, or IC 9-32-5-13 is considered a Class A misdemeanor.</p>	<p>The following penalty provisions from current law were <b>not</b> included in the bill.</p> <p>(1) IC 9-18-26-12: Class A infraction.</p> <p>(2) IC 9-18-26-14: Violation subject to civil penalty between \$50 and \$1,000 per day in violation (paid to the state General Fund). This will decrease General Fund revenue.</p> <p>All other violations are also subject to a maximum civil penalty of up to \$10,000 (IC 9-32-17-1). This revenue is deposited in the Dealer Enforcement Account.</p>
<b>Licensing of Vehicle Salvaging (IC 9-32-9)</b>	<p>IC 9-22-4-13: Violation is a Class C infraction.</p> <p>(Only section in IC 9-22-4 to carry a penalty provision.)</p>	<p>IC 9-32-17-4: A violation of IC 9-32-9-1, IC 9-32-9-2, or IC 9-32-9-10 is considered a Class A misdemeanor.</p>	<p>Enhances penalty of IC 9-22-4-13 from a Class C infraction to a Class A misdemeanor and relocates to IC 9-32-17-4.</p> <p>Creates Class A misdemeanor penalty for IC 9-32-9-10 of the bill.</p> <p>All other violations are also subject to a maximum civil penalty of up to \$10,000 (IC 9-32-17-1). This revenue is deposited in the Dealer Enforcement Account.</p>
<b>Regulation of Vehicle Merchandising (IC 9-32-11)</b>	<p>IC 9-23-6-1: Any violation of IC 9-23 is considered a Class B misdemeanor.</p>	<p>IC 9-32-17-5: Violations of IC 9-32-11-1 and IC 9-32-11-12 are both considered Class A misdemeanors in the bill.</p> <p>Language in IC 9-32-11 is transferred from IC 9-23 of current law.</p>	<p>Enhances penalty of IC 9-23-6-1 from a Class B misdemeanor to a Class A misdemeanor and relocates to IC 9-32-17-5.</p> <p>All other violations are also subject to a maximum civil penalty of up to \$10,000 (IC 9-32-17-1). This revenue is deposited in the Dealer Enforcement Account.</p>

Subject Matter	Language in Current Law and Current Penalty	Similar Language in Bill and Penalty As Proposed	Analysis
<b>Disclosures Required in Motor Vehicle Leases (IC 9-32-12)</b>	<p>IC 9-23-2.5-10: Failing to comply with IC 9-23-2.5 can result in a maximum civil penalty of \$1,000. Total recovery of damages cannot exceed \$100,000.</p> <p>IC 9-23-6-1: Any violation of IC 9-23 is considered a Class B misdemeanor.</p>	<p>IC 9-32-17-9: Failing to comply with IC 9-32-12 can result in a maximum civil penalty of \$1,000. Total recovery of damages cannot exceed \$100,000.</p> <p>Removes the criminal penalty for violations.</p> <p>Language in IC 9-32-12 is transferred from IC 9-23 of current law.</p>	<p>By removing the criminal penalty for violations, this may result in a decrease in Class B misdemeanor convictions.</p> <p>All other violations are also subject to a maximum civil penalty of up to \$10,000 (IC 9-32-17-1). This revenue is deposited in the Dealer Enforcement Account.</p>
<b>Unfair Practices (IC 9-32-13)</b>	<p>IC 9-23-6-1: Any violation of IC 9-23 is considered a Class B misdemeanor.</p>	<p>IC 9-32-13: Violation of IC 9-32-13 are punishable as Class A misdemeanors.</p> <p>Language in IC 9-32-13 is transferred from IC 9-23 of current law.</p>	<p>The bill enhances these crimes from Class B misdemeanors to Class A misdemeanors.</p> <p>All other violations are also subject to a maximum civil penalty of up to \$10,000 (IC 9-32-17-1). This revenue is deposited in the Dealer Enforcement Account.</p>
<b>Administration and Judicial Review (IC 9-32-16)</b>	<p>Language in IC 9-32-16 of the bill does not exist in current law as it pertains to the Secretary of State.</p>		<p>All other violations are also subject to a maximum civil penalty of up to \$10,000 (IC 9-32-17-1). This revenue is deposited in the Dealer Enforcement Account.</p>

The bill adds a new penalty (see *Regulation of Disposal Facilities and Scrap Metal Processors*) in the above chart) that is punishable as a Class D felony. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. Assuming offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$3,234 annually, or \$8.86 daily, per prisoner. However, any additional expenditures are likely to be small. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

However, this bill potentially reduces costs to the state if an offender is convicted of a misdemeanor rather than a felony. Any cost reduction is likely to be small. Offenders convicted of a misdemeanor who are given a prison term are incarcerated in county jails.

**Explanation of State Revenues: Summary** - This bill is expected to increase revenue from national criminal history background check fees as well as revenue collected from civil penalties prescribed by the SOS and fees and funds received from the administration of the DSD. Increases in revenue to the Dealer Enforcement

Account are indeterminable. The bill will generate an estimated \$110,300 in additional revenue to the General Fund by requiring applicants, as a condition of receiving dealer licensure, to obtain a national criminal history background check (at the expense of the applicant).

The bill may also decrease revenue the state receives from wholesale dealer license fees. Any decrease in state revenue is unknown, but if there is a reduction in revenue from these fees, the affected funds will be SOS Dealer Compliance Account, Motor Vehicle Highway Account, Indiana State Police (ISP) Motor Vehicle Odometer Fund, Attorney General Odometer Fund. However, the bill establishes a new dealer-wholesale licence plate. The additional revenue from the dealer-wholesale license may offset any revenue lost from wholesale dealer license fees.

*Additional Information:*

*Crossroads 2000 Fund:* This bill adds the fees collected for dealer plates to the list of fees the Bureau of Motor Vehicles (BMV) may increase to provide money for the Crossroads 2000 Fund. The Crossroads 2000 Fund was established to provide funds for constructing or reconstructing state highways. The bill would allow the BMV to increase the dealer plate fees through rule. The difference between the old fee and the new fee amount would be deposited in the Crossroads 2000 Fund. The BMV had this authority under administrative rule prior to this provision. [The Crossroads 2000 Fund had a balance of \$37.1 M as of July 1, 2012.]

*Interim Dealer Plates:* The bill increases the interim dealer plate fee from \$1 to \$3. This will not result in additional revenue because dealers are currently paying \$3 per plate. The fee was raised by the BMV through an administrative rule. The bill retains the distribution of the interim dealer plate fee. The interim dealer plate fee is deposited as follows: \$2 to the Crossroads 2000 Fund, \$0.90 to the Dealer Compliance Account, and \$0.10 to the Motor Vehicle Highway Account (MVHA).

*National Criminal History Background Checks:* The bill will require applicants for dealer licenses to undergo a national criminal history background check. A national criminal history background check requires a search of the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification. A national criminal history background check is obtained through the ISP. For every national criminal history background check performed in the state, \$15 is forwarded to the General Fund.

The SOS reports that as of January 7, 2013, there were 7,353 licensed dealers in the state. Dealers are required to renew their licenses every year. This bill is expected to increase state revenue by approximately \$110,300 per year from the state fee portion for national criminal history background checks.

*Regulation of Wholesale Dealers:* Because this bill may reduce the number of wholesale dealers in the state, the bill may also decrease revenue received from wholesale dealer licenses. To the extent this bill decreases the number of wholesale dealers in the state, the MVHA, Secretary of State Dealer Compliance Account, Indiana State Police Odometer Fund, and the Attorney General will see a decrease in revenue. Actual decreases are unknown but expected to be small.

The fee for a wholesale dealer license is \$20 for the first place of business and \$10 for each location not immediately adjacent to the first place of business. Revenue collected from wholesale dealer licenses is required to be distributed as follows: 30% to the Secretary of State Dealer Compliance Account, 40% to the MVHA, 20% to the ISP Odometer Fund, and 10% to the Attorney General to enforce odometer laws.

The MVHA may be used for road construction, reconstruction, and maintenance for cities, towns, and counties. The MVHA also supports entirely the operation of the Bureau of Motor Vehicles, a significant part of the operation of the Department of Transportation, about 61% of the operation of the State Police, and part of the operation of the Department of State Revenue.

*Dealer-Wholesaler License Plates:* The bill creates a new dealer plate for dealer-wholesalers. The new dealer-wholesaler plate is \$125 for the first two and \$15 for each additional plate. Currently, wholesalers are issued dealer plates at the same price as other dealers and manufacturers. The current plate cost for wholesalers is \$40 for the first two and \$15 for each additional plate. This change will increase dealer plate revenue by approximately \$162,000 a year beginning in FY 2014. 30% of the fee will be deposited in the Dealer Compliance Account and 70% will be deposited in the MVHA.

*Dealer Enforcement Account Revenue:* The bill creates the Dealer Enforcement Account which is used to finance the administration of the DSD. The fund consists of revenue collected from (1) civil penalties prescribed by the SOS and (2) fees and funds of any kind received from the administration of the DSD. With the exception of a select few civil penalties assessed in the bill, all violations of 9-32 will be subject to a maximum civil penalty of up to \$10,000 per violation in addition to any criminal penalty.

*(Revised) Penalty Provision Changes:* The bill changes several criminal penalty provisions. If additional court cases occur and fines are collected, revenue to both the Common School Fund (from criminal fines) and the state General Fund (from court fees) would increase. However, any change in revenue is likely to be small. Specific fines for the penalty provisions are listed below.

- The maximum fine for a Class D felony is \$10,000.
- The maximum fine for a Class A misdemeanor is \$5,000.
- The maximum fine for a Class B misdemeanor is \$1,000.
- The maximum fine for a Class C infraction is \$500.

**Explanation of Local Expenditures:** (Revised) The bill (1) enhances violations which are currently Class B misdemeanors to Class A misdemeanors, (2) creates new Class A misdemeanors, (3) enhances a Class C infraction to a Class A misdemeanor, and (4) creates a new Class D felony. This may change local expenditures to house offenders. However, any changes are likely to be small. The incarceration durations for the specific penalties are listed below.

- The maximum term for a Class A misdemeanor is up to 1 year.
- The maximum term for a Class B misdemeanor is up to 180 days.

By creating a new Class D felony, more defendants are likely to be detained in county jails prior to their court hearings. To the extent this occurs, local expenditures for jail operations may increase.

**Explanation of Local Revenues:** Local governments could receive additional revenues from any court fees that are collected for cases that were infractions and are now misdemeanors.

**State Agencies Affected:** Secretary of State, Indiana State Police; Department of Correction; Attorney General; Legislative Services Agency; Bureau of Motor Vehicles.

**Local Agencies Affected:** Trial courts; local law enforcement agencies.



**Information Sources:** Indiana State Police Website, <http://www.in.gov/isp/2713.htm>; Secretary of State, Valid Dealers, <http://www.in.gov/sos/dealer/3939.htm>. Carol Mihalik, SOS, 317-232-6687.

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